

Subpart 511.1—Selecting and Developing Requirements Documents

SOURCE: 61 FR 6165, Feb. 16, 1996, unless otherwise noted.

511.103 Market acceptance.

The contracting officer may require offerors to meet market acceptance criteria in accordance with FAR 11.103 when such criteria determined necessary to satisfy the agency's needs.

511.170 Use of brand name or equal product descriptions.

(a) *Policy.* When a “brand name or equal” purchase description is used the purchase description should—

(1) Cite all brand name products known to be acceptable and of current manufacture;

(2) Specify each physical or functional characteristic essential to the intended use of the product including permissible tolerances;

(3) Avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition; and

(4) Give prospective offerors the opportunity to offer products other than those specifically referenced by brand name, as long as they meet the needs of the Government in essentially the same manner as the brand name product.

(b) *Solicitation provisions.* The solicitation—

(1) May require bid samples for “or equal” offers, but not for “brand name” offers.

(2) Must provide for full consideration and evaluation of “or equal” offers against the salient characteristics specified in the purchase description. Do not reject offers for minor differences in design, construction, or features which do not affect the suitability of the product for its intended use.

(3) Must include the following immediately after the item description—

Offering on:

Manufacturer's Name _____

Brand _____

Model or Part No. _____

(4) Should include the following notice, unless bid samples are required for “or equal” offers, in the item listing after each brand name or equal item (or component part) or at the bottom of each page listing several items:

OFFERORS OFFERING OTHER THAN BRAND NAME ITEMS IDENTIFIED HEREIN MUST PROVIDE ADEQUATE INFORMATION TO ENSURE THAT A DETERMINATION CAN BE MADE AS TO EQUALITY OF THE PRODUCT(S) OFFERED.

(c) *Contract clause.* The contracting officer shall include a clause substantially the same as the clause at 48 CFR 552.211-70, Brand Name or Equal, when a brand name or equal purchase description is used. When component parts or an end item are described by brand name or equal descriptions and application of the clause to some or all of the components is impracticable, either do not use the clause or limit its application to specified components.

Subpart 511.2—Using and Maintaining Requirements Documents

511.204 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 48 CFR 552.211-71, Standard References, in solicitations and contracts for construction services when the contract amount is expected to exceed the simplified acquisition threshold and when:

(b) The contracting officer shall insert the clause at 48 CFR 552.211-72, Reference to Specifications in Drawings, in solicitations and contracts citing Federal specifications which contain drawings.

(c) The contracting officer shall include the clause at 48 CFR 552.211-73, Marking, in requirements solicitations and contracts for supplies when deliveries may be made to civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold. The clause may be used in definite quantity contracts when it is appropriate.

(d) The contracting officers shall insert the clause at 48 CFR 552.211-74, Charges for Marking, in solicitations

and contracts that include the clause at 48 CFR 552.211-73 or a similar clause.

(e) The contracting officer shall include the clause at 48 CFR 552.211-75, Preservation, Packaging and Packing, in solicitations and contracts for supplies when the contract amount is expected to exceed the simplified acquisition limitation. The contracting officer may include the clause in contracts awarded through simplified acquisition procedures when appropriate.

(f) The contracting officer shall insert a clause substantially the same as the clause at 48 CFR 552.211-76, Charges for Packaging and Packing, in solicitations and contracts for supplies that are to be delivered to GSA distribution centers.

(g) The contracting officer shall include the clause at 48 CFR 552.211-77, Packing List, in solicitations and contracts for supplies, including purchases made using simplified acquisition procedures.

[54 FR 26510, June 23, 1989, as amended at 60 FR 42802, Aug. 17, 1995. Redesignated and amended at 61 FR 6165, Feb. 16, 1996; 61 FR 10846, Mar. 15, 1996]

Subpart 511.4—Delivery or Performance Schedules

SOURCE: 54 FR 26512, June 23, 1989, unless otherwise noted. Redesignated at 61 FR 6166, Feb. 16, 1996.

511.401 General.

(a) Normally, time of delivery in solicitations and contracts, except multiple award schedules, will be stated as "required" time of delivery (or shipment), expressed in specific periods from receipt by the contractor of a notice of award (or receipt of a delivery order). In multiple award schedule solicitations delivery times will usually be stated as "desired" and offerors will indicate a definite number of days for delivery.

(b) The contracting officer must be satisfied that the requisitioning office has justified, in writing, an unusually short time of delivery. This is particularly important where the time specified is so short that it may limit competition and possibly result in higher prices. Examples of justifications are:

(1) Furniture is required to outfit quarters scheduled for occupancy on a specific date;

(2) Construction material is required to meet job progress schedules; and

(3) Supplies are required at a port to meet scheduled ship departures.

(c) When a portion of the total delivery is needed early, the contracting officer should:

(1) Consider requiring that portion by the early date and the balance later; and

(2) Determine whether the portion required early and the balance should be included as separate items in the same solicitation or whether the two portions should be procured separately.

(d) When a solicitation contains a mixture of items that require different times for delivery, the delivery periods should be set forth separately and items with similar delivery time requirements should be grouped according to delivery times in the solicitation.

(e) In negotiations for multiple award schedules, the contracting officer should secure the best possible delivery time regardless of the "desired" delivery time(s) in the solicitation. For example, some offers comply with the Government's desired delivery time but others cite delivery times which are substantially shorter. The former should be negotiated to bring them in line with the latter. Variable delivery time offers (e.g., 30-90 days) should be negotiated to keep the timespan to a minimum. If the span applies to several items or several quantity breaks for one item, the items or item quantity breaks should be segregated into smaller groups which can be assigned more specific delivery times.

[54 FR 26512, June 23, 1989. Redesignated at 61 FR 6166, Feb. 16, 1996]

511.404 Contract clauses.

(a) *Supply contracts.* The contracting officer shall insert the clause at:

(1) 48 CFR 552.211-1, Time of Delivery, in solicitations and single award schedule contracts for supplies. If it is necessary to show different delivery times for different items or groups of items, use Alternate I.

(2) 48 CFR 552.211-78, Commercial Delivery Schedule (Multiple Award